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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/846,800	04/30/2001	Cathy A. Lynn	LYN01-002P	5176

23635 7590 03/27/2003

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EXAMINER
LAWRENCE JR, FRANK M

ART UNIT	PAPER NUMBER
1724	12

DATE MAILED: 03/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/846,800	LYNN, CATHY A.	
	Examiner	Art Unit	
	Frank M. Lawrence	1724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 March 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 23, 2003 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by West (5,572,800; figures; col. 3, lines 17-30).

4. West ('800) teaches an air freshener dispensing attachment for a hair dryer, comprising a fragrance element (40) having a frame (42,44,45) that is inserted into a cylindrical body (20) for attachment to a hair dryer.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over West ('800) in view of Wonka et al. (5,701,681; figure 4; col. 5, lines 44-55).

7. West ('800) discloses all of the limitations of the claims except that the scenting means is attached to the inlet opening of a blow dryer. Wonka et al. ('681) disclose a hair dryer having a filter attached to the inlet opening. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the blow dryer of West by attaching the scenting means anywhere along the flow of air through the dryer in order to confirm to design or aesthetic limitations as desired by a user.

8. Claims 1-5, 7-10, 13-16 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDowell (5,273,690; figures; col. 2, line 59 to col. 3, line 36; col. 3, line 66 to col. 4, line 21) in view of Vick et al. (5,698,166; figures; col. 1, lines 46-52; col. 3, lines 8-25).

9. McDowell ('690) discloses an air freshener device for a ventilation duct, comprising a porous scent member including scent strips (37) maintained between fabric layers (38,41) which are held in a frame (36), a rigid second "U-shaped" frame (35) for insertion of the scent member, and hook and loop attachment means (45,46) for fixing the frames to the opening of a vent duct having slotted openings, wherein the second frame (35) forms a peripheral wall extending from the vent duct opening and having an end aperture for receiving the scent member. The "U" shape of the second frame (35) provides retaining means that transverse opposing portions of the wall for maintaining the scent member as described in claim 20. The instant claims differ from the disclosure of McDowell ('690) in that the scent does not require manual activation and that scent is applied to the scent member by immersion in a liquid composition that is solidified upon withdrawal.

10. Vick et al. ('166) disclose a scented air freshening device for a filter comprising a porous substrate (11) that contains a solid residue (12), resulting from drying a fragrant liquid solution that is applied to the substrate. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the device of McDowell ('690) by substituting the scent members of Vick et al. ('166) in order to provide a scent member that does not interfere with the flow of air through the a circulation system and continuously disperses scent without the need for manual activation by a user.

11. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over McDowell in view of Vick et al. as applied to claim 1 above, and further in view of Ward (5,087,273; figures; col. 3, line 62 to col. 4, line 63).

12. McDowell in view of Vick et al. discloses all of the limitations of the claim except that the scent element is spherical. Ward ('273) discloses an air freshener for attachment to a filter of a ventilation duct, comprising a packet of particulate beads. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the device of McDowell ('690) in view of Vick et al. ('166) by including the scented beads of the Ward ('273) device in order to provide a fragrant material that has increased surface area, allowing for improved volatilization and greater distribution of scent into an air circulation system with increased longevity of the device.

13. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over McDowell in view of Vick et al. as applied to claim 1 above, and further in view of Frigon (4,563,333; figures; col. 2, lines 18-25).

14. McDowell ('690) in view of Vick et al. discloses all of the limitations of the claims except that the frame is made of cardboard or plastic. Frigon ('333) discloses a deodorizing fitting for air filters, comprising a cardboard frame (12) for enclosing a scent material that is attached to a filter in a ventilation system. Although the primary references do not disclose a specific material for the frame, it is submitted that one having ordinary skill in the art at the time of the invention would have been motivated to modify the frame to include any appropriately rigid material, such as the cardboard frame of Frigon ('333) in order to provide a frame that will effectively mount the scent member to a filter or opening of a ventilation system while being simple and economical to manufacture.

Response to Arguments

15. Applicant's arguments filed January 23, 2003 have been fully considered but they are not persuasive. Applicant argues that West fails to disclose the first member that traverses the opening created by the frame that is attachable to the outside of the airflow conduit. While the limitations that the frame is "attachable to the outside of the airflow conduit" and that the first member "traverses the opening created by the frame" are not even recited in claim 1, the elements (42, 44, 45, 48) of West still clearly anticipate these limitations as discussed in paragraph 4 above. No changes have been made to any of the outstanding rejections as they relate to the final office action of paper no. 7.

16. Applicant also argues that McDowell fails to teach enclosing the scenting elements between the first and second layers, however this limitation is discussed in paragraph 9 above and can bee seen in figure 7 of the patent.

17. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

18. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, reasons for combining each of the references are given in paragraphs 7, 10, 12 and 14 above, and are either found in the references themselves or in the knowledge generally available to one of ordinary skill in the art.

19. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

20. The examiner has agreed with applicant's arguments regarding the new matter objections and rejections, which are now withdrawn. Also, the rejection over Russo has been overcome and has been withdrawn.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank M. Lawrence whose telephone number is 703-305-0585. The examiner can normally be reached on Mon-Thurs 7:30-5:00; alternate Fridays 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Dunn can be reached on 703-308-3318. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Frank Lawrence
Frank Lawrence
Patent Examiner 3 26-03

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March 26, 2003